

William Dobson Clerk,
Appellant.

Gilbert Hearne & al.
Respondents.

The Appellant's CASE.

THAT the Appellant and one *Griffith Reignolds* (since deceas'd) having married two Daughters of *William Bowdler* (who had obtain'd a Grant to him and the said *Reignolds* of the Office of Register and Scribe to Dr. *Herbert Crofts* then Lord Bishop of *Hereford*) and upon the Death of the said *William Bowdler* the Appellant and *Reignolds* took a new Grant under the Episcopal Seal from the said Lord Bishop *Crofts*, dated ' 1 July 1689, to them for their Lives and the Life of the Survivor of them, to be executed by them or either of them, their or either of their Deputy or Deputies; which Grant was on the ' 9th of *August* following confirm'd by the Dean and Chapter under their COMMON SEAL, and the Appellant at the ' Midsummer Sessions of the Peace for the County of *Southampton*, where he then resided, took the Oaths, and subscrib'd the Declaration according to the Act 1^o William and Mary: and on the ' 23d of *April* 1691, the Appellant was admitted to the said Office in the Consistory Court, where he took the Oaths for the due Execution thereof, and also the Oath to the King and Queen; and at the Quarter Sessions 14 July following he brought a Certificate of his receiving the Sacrament, and took the Oaths appointed by the Act 1^o William and Mary, and subscrib'd the Declaration; and the said *Griffith Reignolds* executed the said Office until the Appellant's admission therein, and from that time the Appellant by his Deputy Mr. *Hords* executed and enjoy'd the same during the Life of Bishop *Crofts* (who died in 1691) and after his Death until the Tryal had upon the Writ of Affize in 1695. herein after mention'd.

That Dr. *Ironside* being constituted Lord Bishop of *Hereford*, and apprehending that the Grant to the Appellant and the said *Reignolds* was void, because the said *Reignolds* had not qualified himself by taking of the Oaths, did in *November* 1692. grant the Office to his Nephew the Respondent *Hearne*, which Grant was never confirm'd by the Dean and Chapter; however the Respondent brought an Action

' 1 July 89. Grant to Appellant and Reignolds.

' 9 August 89. Confirmation by Dean and Chapter.

' Midsummer Sessions Appellant took the Oaths, and subscrib'd the Declaration.

' 23 April 91. Appellant admitted and sworn in the Consistory Court, and took the Oaths at Midsummer Sessions.

Novemb. 1692. Grant to Respondent Hearne.

Summer Assizes 1693.
Agreement between
Reignolds and the
Respondent.

12 August 1693. Ser-
jeant Geers's Note.

Action against Mr. *Hords* the Deputy of the Profits of the Office; which being ready for Tryal at *Hereford* in Summer Assizes 1693. it was agreed between the said *Reignolds* and the Respondent (without the Appellant's consent or privity, he being then many miles distant) that the said former Grant to the Appellant and *Reignolds*, and the said later Grant to the Respondent should be cancel'd, and a new Grant taken to the Appellant and the Respondent *Hearne*, for their Lives and the Life of the Survivor of them. In pursuance whereof, the Grants were by consent of *Reignolds* and the Respondent *Hearne* deliver'd to Serjeant *Geers*, who by a Note dated 12 August 1693. did acknowledg the Receipt of the said two Grants, and declar'd that the same were deposited in his hands, *to the intent that a new Grant might be taken to the Appellant and Respondent Hearne, and the Survivor of them, and the Profits thereof might be enjoy'd by them and the Survivor of them, and that the same should be confirmed by the Dean and Chapter, and that the manner of the Receipt of the Profits, and the Accounts of the Office were to be settled by Articles to be seal'd within two months after, as he and Robert Price Esq; (now one of her Majesty's Barons of the Exchequer) should advise.* To which Note *Reignolds and the RESPONDENT DID AGREE, AND SUBSCRIB'D THE SAME.*

18 September 1693.
Grant to the Appellant
and Respondent.

In pursuance of which Agreement (*without the Appellant's privity or consent*) the said Serjeant *Geers* proceeded to take a new Grant from Bishop *Ironside* to the Appellant and Respondent *Hearne*, dated 18 Septemb. 1693. and thereupon, and before such Grant was confirm'd, or any Article executed pursuant to the said Agreement, and without the Privity or any Authority either from *Reignolds* or the Appellant, the said Serjeant cut off the Seals, and cancel'd the Grant made by Bishop *Crofts* to *Reignolds* and the Appellant, as is indors'd on the said cancel'd Patent, to which Indorsement the said Serjeant *Geers*, Henry Knight, and Tamb. *Hords* are Witnesses; and also the other Grant, made by Bishop *Ironside* to the Respondent *Hearne*, was cancel'd at the same time, and both the said cancel'd Grants were left with Bishop *Ironside*.

Septemb. 1694. Grant
to the Respondent.

The Respondent *Hearne* after the cancelling of the Grant to the Appellant and *Reignolds*, procur'd a new Grant from his Uncle Bishop *Ironside*, of the Office to himself (*solely*) in or about the month of September 1694. and taking advantage of the cancelling of the Grant to *Reignolds* and the Appellant (which he had also procur'd to be deliver'd to him by Bishop *Ironside*) brought his Affize against *Reignolds* and the Appellant for the Recovery of the Office; and the Tryal coming on at *Lent*-Assizes 1695. it was with difficulty that the Judg oblig'd the Respondent *Hearne* to produce the cancel'd Grant to the Appellant and *Reignolds*; and when produc'd, it appearing that the Seals were cut off, it was not allow'd to be read in Evidence, or the Witnesses thereto examin'd: and the Respondent obtain'd a Verdict, and got the possession of the said Office, which he and his Deputy have held and enjoy'd ever since.

Hil. 1694. Appel-
lant's Bill filed.

Before the Recovery in the Assize, viz. in *Hilary* Term 1694. the Appellant exhibited his Bill in Chancery against the Respondent *Hearne & al.* to have the Grant to the Appellant and *Reignolds* deliver'd

liver'd up and an account of the Profits, and to be settled in the quiet Possession of the said Office; and having after great Delays us'd by the Respondent, obtain'd an Answer, and by proofs made out his Right, as aforesaid, on the 1st of June 1703. the Court upon the hearing the Cause did Decree, That the Appellant's Bill should be dismiss'd, *but yet without Costs.*

1 June 1703. Order of Dismissal of the Appellant's Bill.

That the Respondent *Hearne*, before such Bill exhibited by the Appellant, exhibited his Bill in Chancery against Serjeant *Geers*, *Reignolds*, *Hords*, and the Appellant, to enforce the Execution of the said *Agreement* made between him and *Reignolds*; and suggesting that the Appellant was a Trustee for *Reignolds* (which he never was) but in regard that *Reignolds* had his Life in the Original Grant to him and *Bowdler*, and the Appellant and he took the Grant before mention'd from Dr. *Crofts*; and they having married two Sisters, the Appellant about a Year after came to an *Agreement* with and gave Bond to *Reignolds*, that he should receive the Profits for his Life; which Bond was afterwards cancel'd: but the Respondent did not think fit to proceed on his Bill, and *Reignolds* died in 1696.

Respondent's Bill in Chancery.

That the Respondent at the Hearing of the Cause did and doth pretend, that the Grant made to the Appellant and *Reignolds* was not well confirm'd by the Dean and Chapter of *Hereford*, there not being the major Number of Canons then actually assembled, as is pretended at the confirmation thereof; whereas there are but six Canons. And by the Books of the Acts of Confirmation it appears, that the Majority were present: and in case there had not been a Majority actually present, yet by the receiv'd and common Custom and Practice in such Confirmations, the absent Canons may make any of the Canons present their *Proxies* to consent thereto; and such Consent hath the same effect as if they were actually present. And the absent Canons did consent by their *Proxies* to the Confirmation, and the Common Seal was duly affix'd thereto. And it's humbly conceiv'd, that if such Confirmation should not be allow'd to be good, it would defeat all Acts done by *Reignolds* and the Appellant and his Deputy; which in the Execution of a Place of so great Trust for several years, and during a time of much publick Business, would be very mischievous.

Upon the whole matter it is humbly conceiv'd that the said Order for *Dismissal* of the Appellant's Bill ought to be repeal'd, and the Appellant reliev'd in these Particulars.

1. A Decree ought to have been for him to enjoy the Office for his Life, & the cancel'd Grant supported.
2. An Account of the Profits ought to have been directed, and a Moyety allow'd to the Appellant, according to the Agreement between *Reignolds* and the Respondent.
3. Or at least an Issue ought to have been directed to be try'd at Law, and the cancel'd Grant allow'd to be given in Evidence.

Wherefore the Appellant humbly hopes that the said Decree or Order of *Dismissal* shall be revers'd, and he reliev'd in the Premises, as shall be just and reasonable.

R. Thornhil.

